IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

JUDGMENT

1. S.B.CIVIL WRIT PETITION NO.2356 OF 1996.
Bajaj Sevashram Ltd. VERSUS Municipal Corporation, Jaipur

2. S.B.CIVIL WRIT PETITION NO.895 OF 1996.
Asian Paints (India) Ltd. VERSUS Municipal Corporation, Jaipur.

3. S.B.CIVIL WRIT PETITION NO.3146 OF 1996.
Philips India Ltd. & Anr. VERSUS Municipal Corporation, Jaipur.

4. S.B.CIVIL WRIT PETITION NO.4735 OF 1994.
Nestle India Ltd. & Anr. VERSUS Municipal Corporation, Jaipur.

5. S.B.CIVIL WRIT PETITION NO.552 OF 1996.
M/s.Jaipur Drinks & Anr. VERSUS Municipal Corporation, Jaipur.

Date of Judgment. : August 25, 2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Sunil Nath, for the petitioners.
Mr.B.K.Sharma, Deputy Government Advocate.
Mr.K.K.Mehrishi, Senior Advocate assisted by
Mr.Sanjay Mehrishi]
Mr.Timan Singh] for the respondent.

BY THE COURT :

1. In these writ petitions, a common question is involved and, therefore, they were all heard together. The petitioners have challenged the imposition of levy and collection of octroi on their goods by the Municipal Corporation, Jaipur.

2. Learned counsel for the petitioners submits that the Division Bench of this court vide judgment dated 02.04.1998 passed in Municipal Corporation, Jaipur Vs. M/s.Karewell Distributors Private Limited & Anr. [D.B.Civil Special Appeal No.651/1992] and ten other cases, has held that in the facts and circumstances where the sale is not followed by consumption or use, the levy of octroi is not attracted merely on the sale. The Division Bench, therefore, directed while deciding such cases that Municipal Board would refund the octroi amount so realized on the goods re-exported without consumption or used along with 12% interest per annum. It was provided that the petitioners shall have to establish that the goods have been exported without consumption or sale within the municipal limits.

3. It was also submitted by the learned counsel for the petitioners that since the case of the present petitioners is identical, inasmuch as, the goods were re-exported by the petitioners without being consumed within the municipal area, the petitioners are entitled to the relief which was granted in these cases by the Division Bench of this Court.

4. Learned counsel for the petitioners also submitted that against the aforesaid decision of the Division Bench of this Court dated 02.04.1998, the Municipal Corporation preferred a Special Leave Petition which was dismissed by the Hon'ble Supreme Court and the review petition filed

before the Hon'ble Supreme Court also stood dismissed.

5. Learned Senior Counsel appearing on behalf of the respondent-Municipal Corporation submitted that so far as the judgment of Division Bench of this Court is concerned and the dismissal of Special Leave Petitioner is concerned, the same are not in dispute. He, however, submitted that w.e.f. 01.08.1998, in the State of Rajasthan, the levy of octroi by all Municipal Corporations and Municipalities under various Notifications issued under Section 104 of the Rajasthan Municipalities Act, 1959 has been withdrawn. It has also been submitted that since the Municipal Corporations failed to comply with the directions given by the Division Bench vide judgment dated 02.04.1998 in D.B.Civil Special Appeal No.651/1992 and ten other cases relating to the fresh assessment and consequent refund, if any, one of the petitioners Hindustan Lever Limited in those cases preferred, D.B.Civil Contempt Petition No.209/2000 for the disobedience of the aforesaid directions contained in the judgment dated 02.04.1998. It is submitted that in the meanwhile, the State has enacted the Rajasthan Municipalities (Amendment and Validation) Act, 2000 (Act No.17 of 2000). The said act reads as under:-

"LAW (LEGISLATIVE DRAFTING) DEPARTMENT
(Group-II)
NOTIFICATION
Jaipur, November 20,2000
No.F.2(33)Vidhi/2/2000.-The following Act of the Rajasthan State Legislative received the assent of

the Governor on the 18th day of November, 2000 and is hereby published for general information: -

THE RAJASTHAN MUNICIPALITIES (AMENDMENT AND VALIDATION) ACT, 2000
(Act No.17 of 2000)
[Received the assent of the Governor on the 18th day of November, 2000]
An
Act

further to amend the Rajasthan Municipalities Act, 1959 and to validate the levy and collection of octroi by the Municipal Corporation of Jaipur and Municipal Council of Alwar and to provide for matters connected therewith and incidental thereto.

Be it enacted by the Rajasthan State Legislature in the Fifty-first Year of the Republic of India, as follows:-

1. **Short title and commencement.**– (1) This Act may be called the Rajasthan Municipalities (Amendment and Validation) Act, 2000.

(2)It shall come into force at once.

2. Insertion of new section 130-A, Rajasthan Act No.38 of 1959.- After the existing section 130 and before section 131 of the Rajasthan Municipalities Act, 1959 (Act No.38 of 1959), hereinafter referred to as the principal Act, the following new section shall be inserted and shall be deemed to have always been inserted namely :-

"130-A. Production of the goods and making a declaration.- (1) Every person bringing within the Municipal limits goods liable to payment of octroi shall produce such goods at the octroi outpost and shall declare whether goods are intended,-

(i) for consumption or use or sale within the municipal limits, or

(ii)for immediate transportation outside the

municipal limits, or

(iii) for temporary detention within the municipal limits and eventual transportation outside municipal limits.

(2) Declaration under clause (i) of sub-section (1) may be oral and declarations under clauses (ii) and (iii) of sub-section (1) shall be in writing in the form No.1 appended to the Rajasthan Municipalities (Octroi) Rules, 1962 and shall be tendered to the incharge of the octroi outpost at the time of bringing the goods within the municipal limits, and if no such declaration is made, the goods shall be deemed as having been brought within the municipal limits for consumption or use or sale therein."

3. Validation.- Notwithstanding any judgment, decree, order or decision of any court or other authority to the contrary, any octroi levied, charged or collected or purported to have been levied, charged or collected before the commencement of this Act and any action taken or thing done before such commencement in relation to such assessment, re-assessment, levy, charge or collection under the provisions of the principal Act and the rules made thereunder shall be deemed to be as valid and effective as if such assessment, re-assessment, levy, charge or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and the rules and bye-laws made thereunder and accordingly:-

(a) all acts, proceedings or things done or taken by the Municipal Corporation of Jaipur and Municipal Council of Alwar or by the officers of the Municipal Corporation of Jaipur and Municipal Council of Alwar or by any other authority in connection with the assessment, re-assessment, levy, charge or collection of such tax or octroi shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;

(b) no suit or other proceedings shall be maintained or continued in any court or being any authority for the refund of any such tax or octroi and the proceedings, if any, before any authority or court shall stand abated;

(c) no fresh proceedings for the refund of any such tax or octroi shall be maintainable before any court or authority; and

(d) no court shall enforce any decree or order directing the refund of any such tax or octroi."

6. It is submitted on the basis of the aforesaid Amending and Validating Act the provisions of Clause (d) that the Division Bench of this Court which was seized of the D.B.Civil Contempt Petition No.209/2000 discharged the notices for contempt and dismissed the contempt petition as no further action could be taken in pursuance of the aforesaid provisions of Amending and Validating Act of 2000.

7. Learned counsel for the petitioners, in rejoinder submitted that while it was correct that the Validating Act after the judgment of this court had been enacted by the State Government and the contempt petition was also dismissed, at the same time it is submitted that some of the aggrieved persons have challenged the validity of the Amending and Validating Act of 2000 and the same is pending consideration before this court.

8. Having heard learned counsel for the parties, I am of the

view that so long as the Amending and Validating Act of 2000 is in force enacting the provisions of Section 3 thereof, no directions can be issued in favour of the petitioner.

9. In view of the aforesaid, these writ petitions are dismissed as having become infructuous. The stay applications also stand dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.